

CDCR Valdivia Monitoring Report

Rio Cosumnes Correctional Center

2008-1st Quarter



CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION



VALDIVIA MONITORING TOUR Rio Cosumnes Correctional Center



Final Report to Task Force and Affected Divisions

Submitted by the

OFFICE OF COURT COMPLIANCE

April 1, 2008

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VALDIVIA/ARMSTRONG TOUR REPORT

Rio Cosumnes Correctional Center

1st Quarter 2008

March 5-6, 2008

I. EXECUTIVE SUMMARY

A) Purpose of the Tour

The Office of Court Compliance (OCC) observed parole revocation proceedings at the Rio Cosumnes Correctional Center, and met with California Department of Corrections and Rehabilitation (CDCR) and California Parolee Advocacy Program (CalPAP) staff. The OCC also toured the Sacramento Metro Parole Unit. The purpose of the tour was to evaluate CDCR's compliance with the requirements of the *Valdivia* Permanent Injunction, the *Valdivia* Remedial Plan, and current departmental policy and procedure pertaining to parole revocation.

B) Tour Attendees

The CDCR representatives were Joe Reynoso, Parole Agent II; Russa Boyd, Deputy Commissioner; Tracy Master, Parole Service Associate; and Theresa Barker, Staff Services Analyst, all from the Office of Court Compliance.

C) Administration of the Tour

The monitoring group observed the following processes:

Revocation:

- 7 Notice of Rights/Charges,
- 8 Probable Cause Hearings, and
- 2 Revocation Hearings.

The monitoring group also reviewed the following documents/revocation packets:

- 2 Notice of Rights/Charges documents,
- 46 revocation packets, *See Exhibit 1-A, Tour Summary Spreadsheet*
- 48 RSTS Case Status Reports (*See Exhibit 1-B*).

The Office of Court Compliance reviewed 46 revocation packets and an additional 2 Notice of Rights/Charges packets for compliance with the *Valdivia* time frames, as well as due process and procedural requirements. The revocation packets reviewed prior to the tour were collected from CalPAP enabling the OCC to conduct analysis on packets provided to defense counsel. A summary of each revocation packet reviewed can be found in the appendix, attached as **Exhibit 1-C**. A summary of all compliance deficiencies identified from the revocation packets can be found in **Exhibit 1-D**. Compliance statistics and trends gathered from a review of the revocation packets are discussed in each section below.

D) Corrective Action Plan:

This report identifies areas in need of corrective action(s) where compliance deficiencies were observed during the monitoring tour and/or through a review of the

revocation documents. The Office of Court Compliance identified corrective action(s) for any deficiency associated with the *Valdivia* procedures/process where the compliance rate was less than 90%. Furthermore, although Exhibit 1-D outlines all deficiencies identified from a review of the revocation packets, the narrative of this report discusses only those deficiencies identified in 10% or more of cases or during observation on the tour itself. The Office of Court Compliance will allow each applicable division to develop the corrective action they deem most appropriate for remedying the compliance deficiencies identified in this report. However, the Office of Court Compliance will continue to provide input and suggestions to the affected divisions, as well as monitor and report on the divisions' progress.

II. Probable Cause Determination

No later than 48 hours after placement of the parole hold, or no later than the next business day if the hold is placed on a weekend or holiday, the parole agent and unit supervisor will confer to determine whether probable cause exists to continue the parole hold, and will document their determination. (Paragraph 11(b)(ii))
Valdivia Permanent Injunction.

- **98% compliant with requirement that a probable cause determination be completed no later than 48 hours after placement of parole hold. See Exhibit 1-A.**

OBSERVATIONS

Sacramento Metro Complex

The monitoring group had the opportunity to interview two Unit Supervisors (US), two Parole Agents (PA I), a Supervising Program Technician (SPT), and two Program Technicians (PT) at the Sacramento Metro Complex. The office staff closely monitors RSTS, facsimiles, teletypes and electronic mail (E-mail) from ID Warrants for new parolee arrests. The Agent of Record (AOR) and/or the Officer of the Day (OD) are notified of the parolee arrest via E-mail, personal contact, or telephone. One US indicated the parole agents he supervises are expected to complete the CDCR 1502-B within 24 hours of the parole hold. If the AOR is not available on the day of arrest, the OD is assigned the task of completing the CDCR 1502-B within 24 hours of the parole hold; however, both US's indicated that if the AOR is in the field when notification of a parole hold comes in, the AOR is required to return to the office to complete the CDCR 1502-B.

The SPT indicated that, in order to ensure cases are assigned to the appropriate agent in a timely manner, clerical staff will also monitor facsimiles and teletypes for new arrests and forward them to the US or the OD. This process serves as a check and balance to ensure timely case assignments and completion of the CDCR 1502-B.

One PA I indicated that she does not believe having the OD review the field file before completing a CDCR 1502-B would be of any benefit since she keeps her Record of Supervision (ROS) notes in a binder, which she keeps in her car. The PA I indicated

the information documenting all of her daily parolee contacts and other pertinent information concerning parolee supervision would be found in her ROS.

The PA I indicated she keeps the ROS in her Field Book until such time as the page is completed front and back with relevant information and then she places it into the field file. She explained, for example, that if a parolee was given an anti-narcotic test, and failed, the results would be entered into the ROS and may not be readily available to the OD during the completion of the CDCR 1502-B. One US interviewed also indicated that the ROS would contain the most recent parolee or collateral contacts including possible violations of Special Conditions of Parole. Not having the ROS located in a central location, or a requirement that the agent completing the CDCR 1502-B discuss the case with the supervising agent, may explain why additional charges are later alleged by the parole agent in those cases in which the OD completes the CDCR 1502-B.

The CDCR 1502-B was completed on an outdated form in 36 cases (75%). *See Exhibits 1-C and 1-D.*

See Exhibit 2 for deficient CDCR 1502-Bs.

❖ CORRECTIVE ACTION REQUIRED:

- Unit Supervisors should conduct training on Policy Memorandum dated May 30, 2007, "Field Book Policy," to ensure unit staff make their field books available, or the information contained therein is conveyed to the OD for use when completing the 1502B.

III. Notice of Rights/Charges

If the parole hold is continued thereafter, no later than 3 business days after the placement of the hold, the parolee will be served with actual notice of the alleged parole violation, including a short factual summary of the charged conduct and written notice of the parolee's rights regarding the revocation process and timeframes. (Paragraph 11(b)(iii)) Valdivia Permanent Injunction.

- 98% compliant with requirement that the Notice of Rights/Charges occur no later than 3-business days after the parole hold. *See Exhibit 1-A.*
- 96% compliant with providing parolee written notice of revocation rights and procedural timeframes (via the BPT 1100). *See Exhibit 1-D.*
- 85% compliant with requirement that a short factual summary of charged conduct be provided at the time of notice (via the CDCR 1502-B). *See Exhibit 1-D.*
- 78% compliant with providing all the charges to the parolee at the notice. *See Exhibits 1-C and 1-D.*

Charges added after the parolee is served his/her Notice of Rights/Charges

CDCR acknowledges that the CDCR 1502-B should include all alleged parole violations known to the parole agent at the time the report is authored. According to

DAPO informational memo dated January 2, 2008, entitled "Violation Report Format and Content," "The parole agent shall include all known or suspected charges at the time the Charge Report is completed." Pursuant to the terms of the *Valdivia* Permanent Injunction and Remedial Plan, the agent of record is given time between submission of the CDCR 1502-B and completion of the CDCR 1676 in order to conduct a follow-up investigation regarding the parole violation(s) alleged against the parolee. During this investigation the agent may discover information leading to additional charges against the parolee which were not presented at the time of the NOR, and which the parole agent was not aware of at the time the CDCR 1502-B was completed. This is often the case where an arrest is initiated by local law enforcement, who often informs the parole agent of the initial reason the parolee was placed into custody. In a number of cases the parole agent does not learn of the panoply of charges alleged against the parolee until local law enforcement concludes its investigation and provides DAPO their complete incident report. The CDCR maintains it is not a violation of due process or the *Valdivia* Permanent Injunction when charges are added after the NOR, where the agent did not have knowledge of the additional charges at the time the AOR writes the CDCR 1502-B.

A number of cases were reviewed, however, where the parole agent had, or should have had, all information related to the added charges at the time the AOR wrote the CDCR 1502-B. There were 26 cases out of 46 reviewed in which charges were added after the NOR. In 10 cases further investigation revealed that the parole agent had, or should have had, information to support the additional charge(s) at the time the CDCR 1502-B was authored (22%). In 16 cases with added charges the investigation revealed that the parole agent did not have knowledge of the charge(s) when writing the CDCR 1502-B, justifying the additional charge(s) on the CDCR 1676. Examples of both types of cases can be found in Exhibit 3.

As noted above in Section II, some parole agents keep their ROS notes on their person and in their cars when they are in the field. Information which supports violations of parole may be contained in the ROS, rather than the parolee field file, at the time DAPO is notified of an arrest. If the OD completes the CDCR 1502-B, he/she is not privy to the information contained in the ROS to charge the parolee with all relevant violations of parole. This may explain, but not excuse, the parole agent adding charges later in those cases when the OD is assigned the task of completing the CDCR 1502-B in the absence of the AOR in order to comply with the timeliness requirements associated with the PCD and NOR.

Adequate statement of fact on the CDCR 1502-B to provide parolee notice of alleged violations

There were 6 cases (13%) that failed to meet the requirement to provide a short, factual summary of each charged conduct at the time the CDCR 1502-B is generated. **See Exhibits 1-C and 1-D.**

Minimum due process as defined in *Morrissey* requires a parolee be provided written notice of the claimed violations of parole, and the *Valdivia* Permanent Injunction requires

the parolee be given "actual notice of the alleged parole violation, including a short factual summary of the charged conduct." Officers from outside law enforcement agencies do not provide the details of most arrests prior to completion and submission of their arrest report. Therefore, the parole agent does not know the facts to support the alleged violations until the arresting officer generates the police report. The CDCR maintains that stating the information provided by the arresting law enforcement agency, including the name of the arresting agency and charge(s) the parolee was reportedly arrested for, is sufficient until the final police report is made available to the parole agent.

In those instances where DAPO initiates the arrest, or the facts underlying the arrest are known to the parole agent, a short factual summary of the charged conduct, including a summary of the parolee behavior and/or evidence leading to the violation charge(s), should be included on the CDCR 1502-B Charge Report (rather than a minimal recitation of the charges themselves). For example, if a parolee is arrested by law enforcement on a Parolee at Large (PAL) warrant, the parole agent should indicate on the CDCR 1502-B the facts that support the absconding charge. The short factual summary might read that the agent attempted a home visit and left a card with reporting instructions but the parolee did not report, or that the parolee did not report to the parole office as instructed after he was released from custody. Such language provides a factual basis for the charge. It is insufficient if the parole agent simply indicates the parolee was arrested on a PAL warrant. The parolee behavior that gives rise to issuance of the PAL warrant is the critical component of the required factual summary.

Both USs indicated they review the CDCR 1502-B to ensure compliance with the *Valdivia* Permanent Injunction regarding the inclusion of a "short factual summary" which outlines each charge contained in the CDCR 1502-B. There were six cases reviewed during this tour in which the CDCR 1502-B failed to include a "short factual summary" of the alleged parole violation(s). None of these cases originated out of the Sacramento Metro units, which supports the statements made by the USs.

NOR OBSERVATIONS

The monitoring group observed seven Notice of Rights/Charges (NOR) during the monitoring tour and interviewed one DRUNA and one Field Unit Notice Agent (FUNA). Two of the notice of rights observed occurred at RCCC by a DRUNA, and five occurred at Sacramento Main Jail (SMJ) by a FUNA.

Preparation for Notice

The DRUNA explained he receives 7 to 10 case assignments each day via faxed copies of the BPT 1073 (with Section I already completed). All cases, for the purpose of in-house tracking, are logged upon receipt at the office. The information contained in Section I is transposed to a new BPT 1073 form. Once the notices are complete, the DRUNA enters the charge information into the Revocation Scheduling Tracking System (RSTS) and the ADA information into Sections II and III in the Disabilities & Effective Communication System (DEC). The DRUNA indicated he uses RSTS to document cases where he is unable to complete a notice, or where the notice is late, as well as the reason for the delay or inability to complete the notice. The DRUNA also stated verifying

source documents are usually included with the BPT 1073 when he receives it. The monitoring team observed that BPT 1074 Request for Reasonable Accommodations Grievance Process forms and CDC 602 Inmate/Parolee Appeal forms were available in the DRUNA's office. The DRUNA carries his ADA equipment with him when he goes to the housing units to conduct notices.

The DRUNA reported he is sometimes assigned the task of completing notices after the no-later-than date has passed because the FUNA received the case late from the parole agent. Two NORs observed during the tour were late, one and two days past the no-later-than ("NLT") date respectively. The Supervising Notice Agent (SNA) indicated that he would research the matter with the applicable US. He reported that he discusses the *Valdivia* time frames with the Unit Supervisors to promote timeliness. A review of the two late cases from this tour revealed that in one case the PCD did occur late, therefore causing the notice to be late, while in the other case the PCD was completed within the prescribed time frames but the notice was completed one business day late. These two cases appear to be unusual, as our review of 46 cases showed only two late cases.

The FUNA explained that he prepares for a notice by reviewing the parolee field file, examining any available ADA documents and TABE scores. Copies of any source document(s) verifying a disability are included in the notice packet. The FUNA reported he does not check DEC when completing the field file review but he does complete Sections I, II and III in the DEC system after a notice is complete. He also carries a complete ADA kit.

Method of Notice

Two NORs were conducted at a window within the housing dorm at RCCC by the DRUNA. This practice has been documented in previous monitoring reports and while the location is less private than an enclosed room, the DRUNA made every effort to keep others away from the area and the jail staff made an announcement reminding everyone to stand back outside of hearing range while the DRUNA was at the window. This DRUNA, who has been observed on several previous tours, continues to follow proper procedure in conducting ADA reviews with parolees, ensuring effective communication, explaining the applicable rights as outlined on the BPT 1100, reviewing the charges alleged from the CDC 1502B, and providing copies of the notice documents. This DRUNA allows the parolees to ask pertinent questions and overall does an excellent job noticing the parolee. In one case (Clark, T82307) the parolee appeared to have trouble seeing the ADA statement prompting the DRUNA to offer a magnifying device which allowed the parolee to read the BPT 1073. The DRUNA documented in Section II that the parolee required visual assistance and he also noted the method of effective communication used during the notice in Section III.

The monitoring team observed the FUNA at the Sacramento Main Jail (SMJ), where parolees were served in a confidential attorney/client booth. Although, the FUNA and parolee were separated by a glass wall; the setting was very quiet and both parties were able to clearly hear and communicate with each other. There was also a slot which

allowed the FUNA to give the parolee copies of the NOR paperwork. The FUNA began the NOR by identifying the parolee and identifying himself and the purpose of his visit. The FUNA first reviewed and completed the BPT 1073 form. The FUNA had the parolee read the ADA paragraph contained in Section II but did not ask the parolee to explain back what he had read. The FUNA completed a thorough ADA review, asking questions regarding education level, any medical or psychiatric issues and medication needs. This information was documented on the BPT 1073 "Effective Communication" line instead of the "Additional Comments" line...

The monitoring team also noticed the FUNA checked the "I do not need help for my parole hearing" box in Section II based on his interview with the parolee but did not allow the parolee an opportunity to self identify and or request additional accommodations he may need. The FUNA explained that if the parolee requests any help or appears to require additional assistance during the notice he will document that information in Section II. Part of the purpose of the Americans with Disability Act is to allow people to self-identify their perceived disabilities. An accommodation that a person perceives that he needs is as important as those accommodations that others think he needs. For CDCR purposes, we must provide effective communication during the revocation process. Thus, the FUNA is encouraged to allow parolees to self-identify their perceived disabilities and record them in Section II of the BPT 1073. Additionally, as with the DRUNA observed, this FUNA completed and signed Section III of the BPT 1073 prior to finishing the entire notice process. It is essential that the CDCR have proper documentation of providing effective communication that is beyond reproach. Filling the paperwork out prior to going through the process with the parolee calls into question the validity of the other documentation completed. These agents both did an excellent job overall noticing parolees. Proper documentation allows CDCR to receive credit for the good work done by the notice agents.

The FUNA did an excellent job reviewing the BPT 1100 with the parolee, explaining in detail each right to which the parolee is entitled, and verifying that the parolee understood these rights. The FUNA also explained the purpose of the BPT 1100B Request for Witness form to the parolee. The FUNA then reviewed the charges listed on the CDCR 1502-B with the parolee. Overall, the FUNA conducted the notices in a proficient manner. Each notice included a thorough ADA review, the FUNA explained the BPT 1100, BPT 1100B, and CDCR 1502-B in a clear, thorough manner, and the parolee was offered an opportunity to ask questions. The FUNA was very receptive to the corrective actions recommended by the monitoring team.

Review of the Notice Documents

A review of the revocation packets revealed the following issue relative to the BPT 1073:

- Impressively, in every case in which Sections I and/or II of the BPT 1073 indicated a disability requiring an accommodation, or the parolee requested an accommodation to facilitate effective communication, the DRUNA/FUNA documented that the accommodation was provided, or made available, to the parolee during the notice.

- General comments were noted on the “Effective Communication Method Used” line of Section III of the BPT 1073 in 13 cases (27%). This section is reserved for noting any accommodations offered and/or provided during the notice to facilitate effective communication, and general notes should be written on the “Additional Comments” line.
- Negative source documents were included in 5 revocation packets (10%). A negative source document is one which verifies that the parolee does not have a disability which will require accommodation during the revocation process. Only those source documents which verify the presence of a disability should be included in the revocation packet.

See Exhibits 1-C, 1-D, and 4.

❖ **CORRECTIVE ACTION REQUIRED:**

- **Supervising Notice Agents should provide all Notice Agents refresher training on the policy and procedure for correctly completing the BPT 1073 form.**
- **Unit Supervisors must ensure parole agents include all known parole violations on the CDCR 1502-B at the time of the Notice of Rights.**
- **The Unit Supervisor reviewing the case should instruct the AOR to include a short statement of fact for each charge where he/she knows, or should know, the factual basis for the charges, prior to submission. The US should direct the AORs to follow informational memo dated January 2, 2008, “Violation Report Format and Content,” as a resource to understand the required content of parole violation reports.**

IV. Unit Supervisor Review of Violation Report

- **100% compliant with requirement that the Unit Supervisor review the Violation Report no later than seven business days after placement of the parole hold. *See Exhibit 1-A.***

INTERVIEW WITH UNIT SUPERVISORS

The US indicated that once the probable cause determination has been made, the AOR is expected to conduct further investigation as needed and submit the completed Violation Report in a timely manner. Once the US receives the CDCR 1676, he reviews it comparing it to the previously submitted documentation (CDCR 1502-B) to ensure the evidentiary information provided supports the charges. One US reported he reviews the CDCR 1676 to ensure any charges not previously included in the CDCR 1502-B are appropriately added. Due to a relatively large number of cases (22%) reviewed during this tour that had charges added to the 1676 where the agent knew, or should have known of the charges, when he authored the 1502B, OCC encourages the US's to make this part

of their revocation packet review so that the US can provide proper training and instruction to the agents.

One US stated he checks the CDC 1654 Parole Revocation Hearing Notice and Witness forms to ensure all appropriate witnesses are requested and also conducts follow-up with the AOR to ensure the witnesses are made available at the hearing. Both US(s) consider the appropriateness of remedial sanctions in every case at both the PCD and the Violation Report steps. OCC commends the US who takes time to ensure that DAPO secures the testimony of the proper witnesses as this allows the state to present the strongest possible case at an actual revocation hearing.

Both USs indicated they continue to experience some difficulty obtaining police reports in a timely manner from the California Highway Patrol and the Sacramento County Sheriff's Office (SCSO), as noted in the last SMT report. One US mentioned it can sometimes take up to two weeks to receive a police report from the SCSO, therefore making it impossible to meet the six-business day *Valdivia* time frame for submission of the Violation Report. One PA I indicated he has been to the SCSO and understands why it might take a long time for the reports to be faxed or mailed given the large volume of police report requests the agent observed first-hand. This particular agent indicated that he has had success obtaining the reports by personally picking them up and suggested that DAPO consider developing a process in which a staff member hand-carries the requests to the SCSO, and picks up the reports, on a daily basis.

Outdated versions of the CDCR 1502-B, CDCR 1521-D and CDCR 1654 continue to be utilized in a vast majority of cases reviewed. **See Exhibit 1-D.**

❖ **CORRECTIVE ACTION REQUIRED:**

- **Unit Supervisors should conduct follow-up training on Informational Memo dated January 2, 2008, "Violation Report Format and Content," to ensure the contents of the Violation Report and supporting documentation follow DAPO policy.**

V. Parole Administrator Review

- **100% compliant with requirement that a Parole Administrator review the revocation packet.**
- Five cases (11%) were designated "Priority" in RSTS but did not meet the criteria for such designation per the DAPO memorandum entitled "Processing of Revocation Cases Related to PC Sections 1192.7(c), 667.5, and 290" dated May 17, 2005. **See Exhibits 1-C and 1-D.**
- There were five cases (11%) in which the case was designated as "Priority" in RSTS but not on the Violation Report. A review of these cases indicated that the Violation Report should have included the "Priority" designation. **See Exhibits 1-C and 1-D.**

According to current departmental policy, the agent of record should identify a revocation case as "Priority" when completing the Violation Report (the "Priority"

designation should be written or stamped on the first page of the Violation Report). The "Priority" designation is given in any case where the parolee has a prior conviction or current parole violation charge for an offense listed in Penal Code sections 1192.7(c) or 667.5, or the parolee is required to register under Penal Code section 290. The Par Ad interviewed reported that he is responsible for entering the "Priority" designation into RSTS when he reviews the case. OCC's review indicates that the "priority" designation is not always accurate which can pose a problem for the BPH as they rely on this designation in their decision-making.

PAR AD INTERVIEW

The Parole Administrator (Par Ad) reported he reviews 25 to 70 packets daily. A majority of revocation packets arrive complete; however, when the packet is incomplete it is usually due to missing ADA source documents. In these cases, the Par Ad contacts the parole unit to request that missing documents be faxed as soon as possible. Normally these requests are answered by the end of the same day and missing documents can be married up with the packet before it leaves the DRU. The Par Ad stated he does not forward a packet without the notice documents; rather, he contacts the FUNA/DRUNA, requests the documents, and then forwards the packet after receiving the missing documents.

In discussing the "Priority" designation policy with the Par Ad, he reported that he reviews each case to verify whether it meets the criteria for a "Priority" designation and will ensure the correct designation is noted in RSTS. According to DAPO policy the AOR is responsible for the "priority" designation; however, because the Par Ad is responsible to review the revocation packet for accuracy, it makes sense that this check-and-balance exist. Unfortunately, OCC's review indicates that in 11% of cases, the "priority" designation was used inappropriately by DAPO. Due to the significance of the designation, it is imperative that it only be used when the parolee actually meets the established criteria.

The Par Ad indicated he considers the appropriateness of remedial sanctions in every case where the parolee is eligible for placement. The monitoring team observed that the Par Ad documents his recommendations regarding remedial sanctions and case disposition on the BPH copy of the CDCR 1521-D only. Because two copies of the revocation packet arrive at the DRU (one for the BPH and one for the attorney), and the Par Ad makes notes only on the BPH copy of the CDCR 1521-D, the attorney packet does not include the Par Ad's recommendation (BPH/DAPO staff does not make a copy of the CDCR 1521-D with the Par Ad's notes for inclusion in the attorney packet). OCC has observed that this is a common practice throughout the state. In most cases, the attorney packet has already been sent to CalPAP when the Par Ad completes his review. Comments and recommendations made by the Par Ad can include important information. For example, Par Ad's often have a difference in opinion from earlier parole recommendations regarding case disposition, make recommendations for placement in a remedial sanction program, describe parolee ineligibility for remedial sanctions, and/or provide justifications for maximum incarceration. This critical information must also be provided to defense counsel so they can plan case strategy, discuss possible options for

case disposition with their client prior to the PCH, and present a full defense with all known information. Additional investigation should be conducted to implement a process whereby the information added to the CDCR 1521-D by the Par Ad is given to CalPAP.

The Par Ad commented on the scanning project within the DRU. He reported the system is great for processing cases at remote locations, can shave days off the time taken to mail packets, and helps keep the various processes within the *Valdivia* time frames. He reported the process would benefit from immediate IT support citing a recent incident when the system went down, requiring the DRU to revert back to overnight mailing. This is consistent with reports made by other staff using the scanning project, who indicate that scanning significantly improves the paper-flow and time pressures of the *Valdivia* process.

❖ **CORRECTIVE ACTION REQUIRED:**

- **DAPO must ensure that Parole Agents and Parole Administrators are familiar with the DAPO memorandum "Processing of Revocation Cases Related the Penal Code (PC) Sections 1192.7(c), and 290" dated May 17, 2005, which outlines the procedures for identifying, processing, and tracking priority cases.**
- **DAPO should consider a means to provide the ParAd's comments upon packet review to the assigned attorney.**

VI. Return to Custody Assessment

- **91% compliant with completing the RTCA within 10 business days of the hold. Exhibit 1-A.**
- **The Deputy Commissioner did not document the consideration of remedial sanctions on the BPH 1104-RTCA in 36 out of 46 cases (78%). Exhibits 1-D and 5.**

The *Valdivia* Permanent Injunction and associated Remedial Plan require that remedial sanctions are considered at every step of the revocation process. Documenting that remedial sanctions were considered during the RTCA review is the best method to show compliance with this requirement.

❖ **CORRECTIVE ACTION REQUIRED:**

- **Associate Chief Deputy Commissioners should instruct the DCs to document their consideration of remedial sanctions at the RTCA step in order to show compliance with the *Valdivia* Remedial Plan.**

VII. Appointment of Counsel

Defendants shall appoint counsel for all parolees beginning at the RTCA stage of the revocation proceeding. Defendants shall provide an expedited probable cause hearing upon a sufficient offer of proof by appointed counsel that there is a complete defense to

all parole violation charges that are the basis of the parole hold. (Paragraph 11(b)(i))
Valdivia Permanent Injunction.

It is the practice of DRU staff to include the date on which the revocation packet is made available to CalPAP in the "Comments" section of the RSTS Case Status Report. Out of the 46 revocation packets reviewed, 42 Case Status Reports included a notation verifying the date the packet was made available to CalPAP and 39 were in compliance with the timely appointment of counsel requirement (85%). **See Exhibit 1-A.**

The monitoring team visited the Sacramento CalPAP office and interviewed the acting staff attorney and office manager. The acting staff attorney has accepted a permanent position at CalPAP Headquarters but a new staff attorney has been hired and will assume his position in a few weeks. Both the staff attorney and office manager reported that CalPAP has an excellent working relationship with the Associate Chief Deputy Commissioner and DRU staff. The two entities work collaboratively in an effort to address issues as they arise.

CalPAP reported that case processing generally runs smoothly at their office. When a specific issue arises they are usually able to work it out by contacting the necessary BPH or DAPO staff. They reported timely receipt of case assignments and generally revocation packets are arriving complete. They estimated that one or two cases each day are missing a Notice of Rights/Charges document or a verifying source document. Because CalPAP has access to DEC they can pull up the BPT 1073 if it is missing, but they reported the verifying source documents are often missing in DEC. A discussion of the recurring compliance issues, as identified by CalPAP, is below.

Over-detention at RCCC: CalPAP regularly receives calls from clients who report they were not released from custody on their scheduled release date. When CalPAP is notified of such a case they contact the parole agent to investigate.

The parole agents have been cooperative in assisting CalPAP with these cases and in most cases the agent had appropriately requested that the jail remove the parole hold and release the parolee from custody. It is unclear why the order to remove the hold was not finalized by the jail staff, but in some cases CalPAP has learned that a warrants check revealed the existence of additional warrants, thus precluding the jail staff from releasing the parolee. However, when this occurs the jail does not inform the parole agent that the parole hold was not, in fact, lifted. CalPAP has been documenting these cases for presentation to the *Valdivia* Task Force. The Office of Court Compliance will continue to monitor this issue and work with DAPO and the jail staff to identify workable solutions.

Scheduling revocation hearings at RCCC: CalPAP reported that attorneys are not always given an option when scheduling a revocation hearing date and time. In some cases the hearing is scheduled unilaterally by BPH staff, and in others the attorney agrees to a hearing date and time, but when the hearing notice arrives the hearing has been set for another date and/or time. Cooperation between the contract attorneys and the BPH schedulers is critical. If a hearing date and time is agreed to, then later changed by BPH,

it is possible that the assigned attorney is unavailable to attend the rescheduled hearing. The parolee should have the benefit of retaining the same attorney for his/her entire revocation action. During the tour the monitoring team observed BPH staff and attorneys schedule revocation hearings after the PCH offer was rejected. The BPH staff took the attorney's schedule into consideration when setting the hearing dates and times. CalPAP reported they have provided the BPH a list of their contract attorneys and have asked that the attorney be contacted when a hearing must be rescheduled. The Office of Court Compliance will continue to monitor this issue and work with BPH to ensure that attorney schedules are considered when scheduling revocation hearings.

Late notice for revocation hearings scheduled at Sutter, Butte, and Yuba County Jails: CalPAP reported that they are provided the revocation hearing schedules at the aforementioned locations one week or less prior to the hearing. This makes it impossible to subpoena defense witnesses in a timely manner. OCC requests that CalPAP document this practice to allow investigation, and that BPH work with CalPAP to schedule hearings considering all affected parties schedules..

Review of the BPT 1104-B

- CalPAP did not complete the "Notice Acknowledgement" segment of the BPT 1104-B. Although the check box **was** marked, the line requiring verification of forms received during the notice was not completed. The purpose of this line is to act as a check and balance on the CDCR's provision of documents to the parolee during parole revocation proceedings. If the parolee received all documents during the notice, the attorney should have written "N/A" on the corresponding line. If any document was not provided during the notice, the attorney should indicate such. This occurred in 13 cases (28%). **See Exhibits 1-D and 6.**
- CalPAP did not complete the "Notice Acknowledgement" segment of the BPT 1104-B. The check box **was not** marked and the line requiring verification of forms received during the notice was not completed. The purpose of this line is to act as a check and balance on the CDCR's provision of documents to the parolee during parole revocation proceedings. If the parolee received all documents during the notice, the attorney should have written "N/A" on the corresponding line. If any document was not provided during the notice, the attorney should indicate such. This occurred in 14 cases (30%). **See Exhibits 1-D and 6.**

❖ CORRECTIVE ACTION REQUIRED:

- **DAPO should meet with senior RCCC jail staff in order to identify a method by which parole agents are notified when jail staff does not honor a request to lift a parole hold due to outstanding warrants.**
- **The Associate Chief Deputy Commissioner and CalPAP staff counsel should agree on a method for scheduling revocation hearing dates which takes the attorney's schedule into account, and implement that agreement as quickly as possible. The parties should be particularly mindful of the need to involve all affected staff in more remote locations like Sutter, Yuba, and Butte counties.**

- CalPAP staff attorneys should instruct their contract attorneys on proper completion of the BPT 1104-B to ensure all necessary information is completed on the form.

VIII. Effective Communication and Effective Communication with Appointed Counsel

At the time of appointment, counsel appointed to represent parolees who have difficulty in communicating or participating in revocation proceedings, shall be informed of the nature of the difficulty, including but not limited to: mental illness, other cognitive or communication impairments, illiteracy, limited English-language proficiency, and the need for a foreign language interpreter. The appointment shall allow counsel adequate time to represent the parolee properly at each stage of the proceeding. (Paragraph 13) Valdivia Permanent Injunction.

Defendants will ensure that parolees receive effective communication throughout the entire revocation process. (Paragraph 18) Valdivia Permanent Injunction.

CDCR must provide effective communication and accommodations to parolees with disabilities at all parole proceedings, pursuant to litigation in *Armstrong v. Schwarzenegger*. The *Valdivia* Permanent Injunction requires effective communication and provision of reasonable accommodation(s) throughout the revocation process.

Missing BPT 1073s and/or Source Documents

According to CalPAP's January 2008 "Cases Missing BPT 1073 & Source Documents Monthly Report," the Sacramento CalPAP office processed 461 cases, 460 of which contained the BPT 1073 (99%). **See Exhibit 1-E.** Of those cases, 97 required an identifying source document, and 87 packets contained the necessary source document (90%). *Id.* This is consistent with OCC's review where 47/48 packets included the BPT 1073 (**Exhibit 1-D**), and 6/7 (86%) of cases requiring a source document had one. **Exhibit 1-E.**

Disabilities and Effective Communication System (DEC)

A review of DEC reveals that a majority of the Deputy Commissioners access DEC prior to the hearing and all are completing Section V of the BPT 1073 in DEC after the ADA review is complete. Section V of the BPT 1073 was completed in DEC in every case reviewed (100%). The monitoring team did note that one Deputy Commissioner did not review DEC prior to the start of the Probable Cause Hearings (See Section X below). There were only two cases (4%) in which Section IV of the BPT 1073 was not completed in DEC. **See Exhibits 1-D and 7.**

Sign Language Interpreters

There were no cases observed or reviewed in which a sign language interpreter was requested or required for any portion of the revocation process.

Foreign Language/CyraCom

There were no cases observed or reviewed in which a foreign language interpreter was requested or required. No problems associated with the use or effectiveness of CyraCom were reported to the monitoring group during this tour. The FUNA indicated the CyraCom phones do not work at Yuba County Jail. She was unaware that the foreign language system is available without using the specialized CyraCom phone. It was explained to her that CyraCom services are still available with the use of any standard phone and phone line

ADA Accommodations Available

The monitoring team verified that ADA equipment was available in the hearing rooms. The FUNAs and DRUNAs reported they carry their equipment when conducting notices.

IX. Confidential Information and Access to Parolee Field File

Non-confidential portions of parolees' field files shall be available to parolees' counsel unless good cause exists for failure to provide access to such files. Field file information shall be withheld from counsel as confidential only in accordance with the Policies and Procedures referenced in Paragraph 15. (Paragraph 16) Valdivia Permanent Injunction.

Two Unit Supervisors and two parole agents were interviewed at the Sacramento Metro Parole Complex. All four acknowledged defense counsel's right to review the parolee field files, although such requests are infrequent. One US indicated that he has had parole agents ask him for clarification on whether CalPAP attorneys can review the field file. On those occasions, the US provided the agent the applicable policy memorandum and reiterated the need to comply with the policy. All four were aware of the current policy regarding attorney access to field files and can easily access it should any questions or concerns arise regarding processing such requests.

X. Probable Cause Hearing

Defendants shall provide a hearing to determine probable cause no later than 10 business days after the parolee has been served with notice of the charges and rights (at the 3rd business day after placement of the hold). (Paragraph 11(d)) Valdivia Permanent Injunction.

At probable cause hearings, parolees shall be allowed to present evidence to defend or mitigate against the charges and proposed disposition. Such evidence shall be presented through documentary evidence or the charged parolee's testimony, either or both of which may include hearsay testimony. (Paragraph 22) Valdivia Permanent Injunction.

- **91% compliant with 13 business-day PCH timeliness requirement.¹ Exhibit 1-A.**

Quality of hearings

¹ CDCR calculates the 10th business day from the NOR, required to occur within 3 business days of the hold, and thus these calculations are based on the PCH timeliness being measured at the 13th business day from the hold.

The monitoring team observed one DC conduct eight probable cause hearings during this tour. The DC conducted a thorough verbal ADA review at the inception of each hearing. He reviewed the BPT 1073 with the parolee and asked pertinent questions in order to ascertain the parolee's ability to effectively understand and participate in the proceedings. The DC asked questions regarding the parolee's education history, mental health status, medication status, mobility, as well as the parolee's ability to read, hear, see, and understand the proceedings. There were several hearings during which the parolee, defense counsel, or the DC identified the need for some type of accommodation, and the DC made the accommodation available. After each ADA review was complete the DC updated DEC to indicate what accommodation(s) were offered and/or provided during the hearing.

During the PCH for parolee Davis (P47021), a review of the BPT 1073 indicated the parolee's legs give out at times, but the parolee did not request any form of accommodation on the BPT 1073. The verbal ADA review revealed that the parolee only requires accommodation when he must climb stairs, but he was allowed to use the elevator in order to access the second floor hearing room. Both the parolee and defense counsel were in agreement that further accommodation would not be necessary for the PCH.

In the case of parolee McKibben (V46585), the BPT 1073 revealed the need for a wheelchair; however, the parolee did not have one at the PCH. The ADA review confirmed that the parolee only sometimes requires the use of a wheelchair and the parolee reported he was not currently in need of one. Both the parolee and defense counsel agreed the parolee had been adequately accommodated for the hearing.

The only compliance deficiency observed regarding the ADA review was the DC's failure to check DEC prior to conducting the ADA review. Although the DC reviewed the current BPT 1073 and asked a myriad of questions to gauge the parolee's ADA needs, current policy and procedure requires that the DC view the DEC system prior to conducting the PCH. The Associate Chief Deputy Commissioner (ACDC) was made aware of this compliance deficiency and agreed to follow-up with the DC to ensure the information contained in DEC is reviewed prior to the PCH. The monitoring group was notified that the ACDC took corrective action by meeting with the two DCs observed during the tour and explained the various policies which require the DC review DEC prior to any parole proceeding. The DCs were receptive to her input and confirmed that they will check DEC prior to any proceeding and will continue to update DEC after completion of the ADA review.

The remainder of each proceeding was conducted in a manner consistent with the *Valdivia* Permanent Injunction, *Valdivia* Remedial Plan, and current policy and procedure. The DC reviewed the charges with the parolee and defense counsel, including the evidence supporting the charges. The parolee and defense counsel were then allowed to present any evidence in defense or mitigation to the charges. The DC then announced

his probable cause finding for each charge. The DC next reviewed the parolee's criminal history, performance on parole and prior parole violations and again allowed the parolee and defense counsel the opportunity to present any additional mitigating evidence and negotiate an offer for case disposition.

The DC then discussed the appropriateness of remedial sanctions in those cases where the parolee was eligible for participation in a remedial sanction program. A review of RSTS indicates that the DC recorded the basis for his decision to exclude a parolee from participation in a remedial sanction where the parolee was eligible but deemed inappropriate for placement. After negotiating possible case dispositions with defense counsel, the DC announced his final PCH offer and the parolee and counsel were given time to discuss whether to accept the offer or schedule the matter for a full revocation hearing. In those cases where the parolee rejected the DC's final offer, the parolee was given time to request witnesses for the revocation hearing.

Evidentiary Basis for Probable Cause Finding Documented by Deputy Commissioner

Minimum due process requires that the hearing officer shall have the duty of making a summary, or digest, of what occurs at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. *Morrissey v. Brewer*, 408 U.S. 471 at 487 (1972). Furthermore, the decision maker should state the reasons for his determination and indicate the evidence he relied on..." *Id.* In order to meet this due process requirement, the DC must document the evidence relied on when finding probable cause rather than simply citing the source of the evidence.

There were 39 cases out of 46 reviewed in which the DC did not adequately document the evidentiary basis for their probable cause finding (85%). **See Exhibits 1-D and 8.** In these cases the DC used vague language like "probable cause found based on information presented" or "probable cause supported by evidence/documents provided" as the basis for the probable cause finding. This is insufficient. The Deputy Commissioners must document the actual evidence relied on, such as a parolee's admission, or the parole agent's statement that the parolee failed to report to the parole office as scheduled, to meet the mandates of due process when creating a written record of the proceedings. The ACDC was made aware of this compliance deficiency and she took corrective action by meeting with the DCs observed during the tour and explaining that they must cite the actual evidence relied on when supporting their decision as opposed to citing the document that the evidence is contained in.

Telephonic Probable Cause Hearings

No telephonic probable cause hearings were conducted during this monitoring tour.

Review of the revocation documents

A review of the revocation packets revealed the following additional compliance deficiencies:

- The Deputy Commissioner did not document the consideration of remedial sanctions on the BPH 1103-PCH in 17 out of 46 cases (40%). The *Valdivia*

Permanent Injunction and associated Remedial Plan require that remedial sanctions are considered at every step of the revocation process. Documenting that remedial sanctions were considered during the PCH is the best method to show compliance with this requirement.

See Exhibits 1-D and 8.

- **CORRECTIVE ACTION REQUIRED:**
 - Associate Chief Deputy Commissioners should instruct Deputy Commissioners to review the information contained in DEC prior to conducting the ADA review at the PCH, in accordance with current BPH ADA/DEC procedures
 - 1. The ACDC took corrective action on this issue with the two DCs observed during this tour.
 - Associate Chief Deputy Commissioners should instruct the DCs to document their consideration of remedial sanctions at the PCH step. The *Valdivia* Permanent Injunction and *Valdivia* Remedial Plan specify that remedial sanctions must be considered at every step of the revocation process, and documenting such consideration memorializes compliance with this requirement.
 - Associate Chief Deputy Commissioners should instruct Deputy Commissioners to document in RSTS the actual evidence relied on in making a finding of probable cause. Merely citing the source of the evidence alone does not comply with the requirements of minimum due process.
 - 1. The ACDC took corrective action on this issue with the two DCs observed during this tour.

XI. Revocation Hearing

For all parolees who do not waive or seek a continuance of a final revocation hearing, Defendants shall provide a final revocation hearing on or before the 35th calendar day after the placement of the parole hold. (Paragraphs 11(b)(iv) and 23) *Valdivia* Permanent Injunction.

- **92% compliant with requirement that the parolee have a final revocation hearing no later than 35-calendar days from the parole hold. Exhibit 1-A.**

Minimum due process requires that a parolee be given an opportunity for a hearing, if it is desired, prior to the final decision on revocation by the parole. The *Valdivia* Permanent Injunction and *Valdivia* Remedial Plan require that a parolee be given a final revocation hearing no later than 35 calendar days after placement of the parole hold.

The monitoring group was able to observe two revocation hearings during the monitoring tour and reviewed 22 additional cases that had proceeded to the revocation hearing step. Out of the 24 cases reviewed for timeliness, 22 revocation hearings occurred in a timely manner (92%). **See Exhibit 1-A.**

Both revocation hearings were initiated with the completion of an ADA review. The ADA reviews were conducted in a manner consistent with current policy and procedure. In both cases the parolee was a participant in the Mental Health Service Delivery System. Neither parolee had received their psychotropic medications since their arrival at the Sacramento Mail Jail. The DC asked the parolee pertinent questions to ascertain whether the parolee was able to effectively communicate without their medications. In addition, the DC informed the parolee and defense counsel that she or the Board Revocation Representative (BRR) would contact the jail's mental health staff to request that the parolee be seen by the necessary medical staff and prescribed the appropriate medications. After the ADA review was completed, the DC reviewed the revocation rights as outlined on the BPH 1100, paying close attention to the right to an impartial hearing officer, and asked the parolee and defense counsel whether there were any preliminary objections.

During the revocation hearing for parolee Medina (J37568), defense counsel made a preliminary statement that the parole agent intended to ask for a dismissal. The parolee was charged with battery on a spouse/child and the alleged victim was present to testify and planned to recant the claims she made against the parolee. The parole agent confirmed that the victim recanted her prior statements and made a motion that the charge be dismissed. The DC agreed, the charge was dismissed, and the parole agent was reminded to lift the parole hold. In addition, the DC informed the parolee that she would no longer be contacting jail staff to request the parolee be seen for his medication needs, but that he should report to the Parolee Outpatient Clinic (POC) upon his release to request that any necessary prescriptions be filled.

There were no due process or procedural concerns observed during the revocation hearing for parolee Grimes (P56928). One of the parolee's witnesses did not appear but defense counsel had spoken to her over the telephone prior to the hearing. The DC allowed defense counsel to provide a summary of what the witness would have testified to had she been present. Based on the testimony of the parolee, coupled with defense counsel's summary of the statements made by the witness who failed to appear, the DC amended the charge from absconding parole supervision to changing residence without informing the Parole and Community Services Division (P&CSD). The parolee was allowed to present mitigating evidence, and was ultimately assessed a three-month eligible return to custody.

Review of the revocation documents

A review of the revocation packets revealed the following compliance deficiencies:

- The Deputy Commissioner did not document the consideration of remedial sanctions on the BPH 1103-REV in 6 out of 24 cases (25%). The *Valdivia* Permanent Injunction and associated Remedial Plan require that remedial sanctions are considered at every step of the revocation process. Documenting that remedial sanctions were considered during the Revocation Hearing is the best method to show compliance with this requirement.

See Exhibits 1-D and 9.

❖ **CORRECTIVE ACTION REQUIRED:**

- Associate Chief Deputy Commissioners should instruct the DCs to document their consideration of remedial sanctions at the revocation hearing step. The *Valdivia* Permanent Injunction and *Valdivia* Remedial Plan specify that remedial sanctions must be considered at every step of the revocation process, and documenting such consideration memorializes compliance with this requirement.

XII. Mentally Ill Parolees

One DC was interviewed regarding the current process for handling parolees who appear unable to participate in the revocation process due to mental illness. He was able to articulate the current policy. Currently, CDCR clinicians are directed not to respond to BPH requests for treatment or status information regarding parolees whose revocation proceedings have been suspended due to mental health concerns. However, the Associate Chief Deputy Commissioner reported that Mental Health staff at RCCC continues to share treatment and mental health status information with the BPH when they request updates on the condition of parolees who are in suspended status. Many of the county jails that feed into RCCC require the parolee sign a release of information waiver before they will provide any treatment or mental health status information to the BPH. If the parolee is willing to sign the waiver then treating physicians will share clinical information with the BPH. A review of the February 2008 psychiatric suspension log indicates that there are currently no parolees at RCCC (or the county jails that feed into RCCC) whose revocation actions have been suspended due to mental illness.

XIII. Ability to Subpoena Witnesses

Parolees' counsel shall have the ability to subpoena and present witnesses and evidence to the same extent and under the same terms as the state. (Paragraph 21) *Valdivia* Permanent Injunction.

Several PCHs concluded with the parolee rejecting the final PCH offer and opting to proceed to a full revocation hearing. Defense counsel and the parolee were given time at the conclusion of the PCH to select their witnesses and fill out the BPH 1100-B for approval by the DC. The DC did not deny any parolee a requested witness during the observed hearings.

XIV. Presentation of Evidence at Revocation Hearings

The use of hearsay evidence shall be limited by the parolees' confrontation rights in the manner set forth under controlling case as currently stated in *United States v. Comito*, 177 F.3d 1166 (9th Cir. 1999). The Policies and Procedures shall include guidelines and standard derived from such law. (Paragraph 24) *Valdivia* Permanent Injunction.

There were no *Comito* objections lodged during the observed revocation hearings.

XV. Staffing Levels

Defendants shall maintain sufficient staffing levels in the CDC and BPT to meet all of the obligations of this Order. (Page 6, lines 15-17) Valdivia Permanent Injunction.

Staffing levels are, for the most part, sufficient to meet the obligations of the order. The current *Valdivia* staffing levels are summarized below.

BPH:

A new ACDC recently took over leadership at the Bradshaw DRU and RCCC. She has only been on the job approximately six weeks. At the time of the tour, she had not yet received an updated Organizational Chart to enable her to report where current vacancies exist. She has requested an updated chart. However, staffing is currently at a level that the BPH workload associated with processing revocation actions has not been negatively affected. Staff is able to perform their job functions without delay or significantly increased workload.

DAPO:

The monitoring team interviewed one Supervising Notice Agent (SNA) who explained that a tremendous workload has been created as a result of the two FUNA vacancies he has not been able to fill. He indicated that the problem is a result of the lateral hiring freeze which will not allow for the hiring of any Parole Agents applying for the positions on a lateral basis. The SNA indicated that he has FUNAs and DRUNAs working overtime and has shifted DRUNAs to assist FUNAs in the field in order to meet the *Valdivia* timelines and does not believe the problem can be solved until the two vacant positions are filled. The SNA indicated staff has managed to complete the notices within the required timelines in a majority of cases thus far.

Current staffing levels for DAPO are summarized in the chart below:

<i>Position Classification</i>	<i>Authorized Number of Positions</i>	<i>Vacancies</i>
District Administrators	1	1 acting Administrator
SNA	1	0
Notice Agents	16	2 vacancies